the Ordinance which entitled the taxpayer to apportion the cost of insurance or road tax. This point was not argued before me. In any event it could not be more than the costs divided by the fraction of duty mileage divided by total mileage. The findings of the Commissioners do not give any figures as regards mileage. The case must be remitted to the Commissioners for consideration on the lines laid down in this judgment.

There will be no costs of this appeal.

Case remitted to the Commissioners.

PUBLIC PROSECUTOR v. CHIN KIANG YIN

[O. Cr. J. (Thomson J.) February 10, 1956]

[Ipoh — Perak Criminal (Emergency) Trial No. 30 of 1955]

Emergency Regulations, 1951, reg. 4(1)(b) and (2A) — Effect of sub-reg. (2A) on defences under ss. 76 to 106 of the Penal Code — "Without lawful excuse" — "Exception" not to be read as synonymous with "excuse" — Defence of duress.

The accused in this case was charged as follows: "That you, on or about the 23rd day of October 1955, in the vicinity of the perimeter fence of the Tronoh town, in the State of Perak, without lawful excuse, did have in your possession ammunition, to wit, 20 rounds of 12 bore cartridges, without lawful authority therefor, and that you did thereby commit an offence punishable under Regulation 4(1)(b) of the Emergency Regulations, 1951."

There was clear evidence of the possession charged of and the only defence was that of duress.

Held: (1) ss. 76 to 106 of the Penal Code makes it clear that although the Chapter heading is "General Exceptions" the word "exception" is not to be read as synonymous with the word "excuse", and these sections declare no offence is committed in circumstances contemplated by them; (2) regulation 4(2A) does not exclude the availability of the various defences contained in the "General Exceptions" of the Penal Code.

[**Editorial Note:** See also the decision of the Privy Council in **Subramaniam v. Public Prosecutor**, at p. 220 infra.]

Cases referred to:—

(1) *Wong Pooh Yin v. Public Prosecutor* (1954) M.L.J. 189.

(2) *Lim Ah Tong v. Public Prosecutor* (1948-49) M.L.J. Supp. 15.

EMERGENCY TRIAL.

A. P. Jack (Federal Counsel) for the prosecution.

N. Sharma for the accused.

Thomson J. (giving his ruling): — I adjourned this trial yesterday to give myself an opportunity to consider the question of whether the effect of the amendment to Regulation 4 of the Emergency Regulations which is contained in sub-regulation 4(2A) which was published on 3rd January last year is to exclude the various defences referred to in sections 76 to 106 of the Penal Code in cases of this nature and, in particular, whether it has the effect of excluding the defence of duress set out in section 94.

Regulation 4(1)(b) with which we are concerned in the present case is to the effect that any person who without lawful excuse has in his possession any ammunition without lawful authority therefor shall be guilty of an offence and shall on conviction be punished with death.

The words "without lawful excuse" were inserted in the Regulation some time after its original enactment and, in my opinion, it was unfortunate that they were introduced because they have given rise to a great deal of difficulty and confusion. That difficulty came to a head in *Wong Pooh Yin's*[1] case which ultimately went to the Privy Council and it was presumably by reason of what was decided by the Privy Council in that case that sub-regulation 2A was added to the Regulation. It is to the effect that "a person shall be deemed to have lawful excuse for the purposes of this Regulation only if he proves" certain things which are set out one of which is that he acquired the ammunition (or firearm as the case may be) in a lawful manner and for a lawful purpose.

Now, in my judgment, sub-regulation 2A is capable of two meanings according as to where there is a pause and a notional comma. It all depends on whether the pause and the notional comma occur before or after the word "only". If they occur after the word "only" then I think the sub-regulation is clearly to be read as putting a special statutory meaning on the words "lawful excuse" for the purposes of Regulation 4 only. If the pause and comma occur before the word "only" then the effect seems to me to exclude any sort of excuse whatsoever except in the circumstances set out in the Regulation.

On the ordinary canons of construction, I am of the opinion that the first of these two alternative interpretations is to be placed upon the sub-regulation, that is to say, it is to be read as defining the expression "lawful excuse" as it occurs in the Regulation and is not to be taken any further than that.

In the first place, as I have already said, it seems only reasonable to suppose that the sub-regulation was enacted in consequence of the decision of the Privy Council in *Wong Pooh Yin's*[1] case, *supra*. In that case, the Court was concerned with the state of affairs that had no connection whatsoever with the so-called general exceptions contained in the Penal Code.

In the second place, though this by itself might not be a conclusive reason, any other interpretation would have the effect not only of excluding the availability of the defence of duress but of excluding the availability of such defences as insanity and nonage which seems to me such an extreme departure from the ordinary principles of our criminal law that it is to be avoided if at all possible.

In any event, the wordings of the various sections comprised in the portions of the Penal Code in question, i.e. sections 76 to 106 seem to make it clear that although the chapter heading is "General Exceptions" the word "exception" is not to be read as synonymous with the word "excuse". I take for example section 76 :—

"Nothing is an offence which is done . . . . by reason of a mistake of fact . . . . . "

It does not say a mistake of fact is an excuse for committing an offence. It says that where there is a mistake of fact there is no offence and similarly with all the succeeding sections. They all begin with the words "Nothing is an offence."

For these reasons, then, I am not satisfied that the new sub-regulation excludes the availability of the various defences contained in those portions of the Penal Code which have been mentioned. Nor do I think there is anything in it which would justify me in not following the decision of the Court of Appeal in *Lim Ah Tong v. Public Prosecutor*[2] to the effect that all the general exceptions set out in those portions of the Code apply to offences under the Emergency Regulations.

Accordingly in the present case I hold that the defence of duress (and I say this without any prejudice whatsoever to the question of whether it is made out) is an available defence.

I propose to decide the case on that basis and I propose to invite the assistance of the Assessors on that basis.

MAQBOOL SINGH DHILLON v. PUBLIC PROSECUTOR

[A. Cr. J. (Buhagiar J.) February 27, 1956]

[K. L. — Criminal Appeal No. 89 of 1955]

Criminal Procedure Code (Cap. 6), ss. 167, 169 & 173(h) — Whether a subordinate Court is precluded by s. 173(h) from convicting of another offence under ss. 167 or 169 without specifically amending the charge.

In this case the accused was originally charged with an offence under s. 120B of the Penal Code. At the end of the prosecution case, the learned President came to the conclusion that there was a case to answer but after hearing the defence he thought that the facts disclosed an offence under s. 247(b) of the Land Code (Cap. 138) and therefore convicted accordingly; no fresh charge was formulated.

Held: where in a subordinate Court the President or Magistrate comes to the conclusion that the facts proved do not constitute the offence charged but constitute another offence, the Court is not precluded by s. 173(h) of the Criminal Procedure Code (Cap. 6) from convicting of another offence under ss. 167 or 169.

[**Editorial Note:** The judgment in this appeal disagrees with certain remarks of Spenser Wilkinson J. in **Lau Chan Chuah** v. R.[1]. The appellant applied for a Certificate under s. 34 of the Courts Ordinance, 1948, but it was refused on the grounds of there being several cases referred to in the Appeal Judgment which did not support the view taken in **Lau Chan Chuah's** case, and that since then, the point had been considered by the Singapore High Court in **Lew Cheok Hin** v. R. reported at p. 131, *supra*.]

Cases referred to :—

(1) *Lau Chan Chuah v. R.* (1955) M.L.J. 246.

(2) *Pretty v. Solly* 26 Bea. 606, 610.

(3) *Ramalingam Pillay v. R.* (1905), 9 S.S.L.R. 99.

(4) *Latip v. R.* (1941) M.L.J. 5.

(5) *Kundan Singh v. Public Prosecutor* (1939) M.L.J. 27.

MAGISTRATE'S CRIMINAL APPEAL.

S. D. K. Peddie for the appellant.

J. G. Adams (Federal Counsel) for the respondent.

Buhagiar J. : — This is an appeal against conviction of an offence under section 247(b) of the Land Code.

The appellant was originally charged with an offence punishable under section 120(b) of the Penal Code in that he agreed with others to do an illegal act namely to conceal from the proper registering authority a material fact to wit, the true consideration for the transfer of a plot of land and the said illegal act was done in pursuance of the agreement. At the end of the prosecution case the learned President held that there was a case to answer but at the end of the defence he came to the conclusion that the facts disclosed an offence under section 247(b) of the Land Code and convicted him accordingly; no fresh charge was formulated. The learned President relied on and applied the principle set out in *Mallal's* Criminal Procedure, 3rd edition at p. 192 :—

"A conviction upon a charge which was not expressly formulated is not improper where the facts which it was necessary to prove on the charge as framed and on which evidence was given are the same as the facts upon which the accused could be convicted of the substantive offence, provided that the accused is put to no disadvantage and would have had to adduce no further evidence."

The learned President was fully satisfied that the accused had been put to no disadvantage and would